115-348

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~285~~. 30

DANA SARGENT AND DANIEL F. SULLIVAN, ASSIGNEE OF DANA SARGENT, APPELLANTS,

vs.

JOHN A. HELTON, SHERIFF OF ESCAMBIA COUNTY, ALABAMA, JAMES H. GREEN, SHERIFF OF ESCAMBIA COUNTY, ALABAMA, SUCCESSOR IN OFFICE OF SAID JOHN A. HELTON, YOUNG M. RABB AND McDUFF MANN, AND YOUNG M. RABB AND McDUFF MANN, UNDER THE STYLE OF RABB AND MANN, HENRY MORNINGSTAR AND JAMES W. MANN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED SEPTEMBER 29, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 285.

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vs.

JOHN A. HELTON, SHERIFF OF ESCAMBIA COUNTY, ALABAMA, JAMES H. GREEN, SHERIFF OF ESCAMBIA COUNTY, ALABAMA, SUCCESSOR IN OFFICE OF SAID JOHN A. HELTON, YOUNG M. RABB AND McDUFF MANN, AND YOUNG M. RABB AND McDUFF MANN, UNDER THE STYLE OF RABB AND MANN, HENRY MORNINGSTAR AND JAMES W. MANN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 *Bill of Complaint.*

To the judges of the circuit court of the United States for the southern district of Alabama:

Dana Sargent, of Nashua, in the State of New Hampshire, of which State he is a citizen, and Daniel F. Sullivan, who is a citizen of the State of Florida, assignee of said Dana Sargent, brings this his bill against John A. Helton, sheriff of Escambia county, in the State of Alabama, of which county he is a resident, and a citizen of the said State of Alabama; and James H. Green, sheriff of Escambia county, Alabama, as the successor in office of defendant, John A. Helton, who is also a citizen of the State of Alabama; Young M. Rabb, who is a citizen of said State of Alabama, and a resident of the county of Conecuh, in said State; McDuff Mann, who is also a citizen of the State of Alabama and a resident of said district, but of which county thereof your orator has been unable to ascertain; and said Rabb and McDuff Mann, under the style of Rabb and Mann; Henry Morningstar, of said county of Escambia, who is a citizen of the State of Alabama; and James W. Mann, who

2 is a citizen of the State of Alabama, and resides in said district, but in which county thereof your orator has been unable to ascertain; and thereupon your orator complains: That the Pensacola Lumber Company, a corporation created and existing under the laws of the State of New York, was, on 27th of February, A. D. 1875, adjudicated and declared a bankrupt by the district court of the southern district of New York, sitting in bankruptcy; and that C. Edgar Smith, of the city and State of New York, having been duly elected and qualified as assignee in bankruptcy of said corporation, on the 18th day of May, 1875, James F. Dwight, register in bankruptcy of said district court, did convey to the said Smith all the estate of said corporation by a deed of assignment, according to the provisions of section 5044 of the Revised Statutes of the United States.

And your orator further shows unto your honor that before and at the time said corporation was declared a bankrupt it was the owner of an undivided half of a large body of land, situated in the county of Escambia, State of Alabama, and known in the United States surveys as section three (3), except S. ½ of S. W. ¼, and sections

3 eleven (11) and thirteen (13), township one (1) north, range seven (7) east; section three (3), nine (9), except N. E. ¼ of N. W. ¼, twenty-seven (27), twenty-one (21), east ½ of section twenty-nine (29), thirty-three (33), west ½ of section thirty-five (35), west ½ of section fifteen (15), all of section seventeen (17), except N. E. ¼ of N. E. ¼, in township two (2) north, range seven (7) east; and section nineteen (19), township one (1) north, range eight (8) east; and west ½ of section thirty-five (35), township three (3) north, range seven (7) east. And that said corporation was the owner of the whole of the following land, known in the United States surveys as N. ½ of S. E. ¼ of section one (1), sections five (5) and nine (9), fifteen (15), except the N. W. ¼ of N. E. ¼, sections seven (7), seventeen (17), thirty-one (31), thirty-three (33), in township one (1) north, range

seven (7) east; sections one (1) and seven (7), eleven (11), except E. ½ of N. W. ¼ and W. ½ of N. E. ¼, thirteen (13), E. ½ of section fifteen (15), nineteen (19), E. ½ and E. ½ of west ½ of section twenty-three (23), section twenty-five (25), west ½ of section twenty-nine (29), all of section thirty-one (31), except N. ½ of N. W. ¼, east ½ of section thirty-five (35), in township two (2) north, range seven (7) east; section twenty-five (25), E. ½ of section thirty-five (35), in township three (3) north, range seven (7) east; east ½ of section three
4 (3), sections five (5), nine (9), fifteen (15), seventeen (17), twenty-one (21), W. ½ of W. ½ of section twenty-three (23), E. ½ of N. E. ¼, W. ½ of W. ½, E. ½ of S. W. ¼, and S. W. ¼ of S. E. ¼ of section twenty-seven (27), S. ½ and N. W. ¼ of section twenty-nine (29), north ½ of section thirty-five (35), in township one (1) north, range eight (8) east; sections one (1), three (3), five (5), seven (7), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), W. ½ of section thirty-five (35), in township two (2) north, range eight (8) east; sections one (1), three (3), five (5), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), thirty-five (35), in township three (3) north, range eight (8) east; sections five (5), seven (7), nineteen (19), twenty-nine (29), except N. W. ¼ of S. W. ¼, seventeen (17), E. ½ of section thirty-one (31), township two (2) north, range nine (9) east; sections five (5), seven (7), seventeen (17), except N. W. ¼ of S. W. ¼, nineteen (19), twenty-nine (29), thirty-one (31), in township three (3) north, range nine (9) east. Said lands being, as orator is informed and believes, of the value of twenty-five thousand dollars
5 ($25,000.00), and by an order and decree of said district court for the southern district of New York, sitting in bankruptcy, rendered on 22nd day of December, A. D. 1875, confirming and carrying out another which it had previously rendered on the 8th of March, 1875, all the estate of the said corporation, including said lands, was sold, at public sale, to the highest bidder, on the 5th of January, 1876, in the city of New York; that at said sale your orator, being the highest bidder, became the purchaser of all said lands; that said purchase was confirmed by an order and decree of said district court, sitting in bankruptcy, on the 18th of January, A. D. 1876; and your orator, having complied with the terms of said sale, on the 25th day of the same January, the said assignee executed and delivered to your orator a deed for all said estate, including said lands, which was afterwards duly recorded, on the 7th day of February, A. D. 1876, in the probate office of said Escambia county, State of Alabama. And on the 8th day of April, A. D. 1876, the said assignee executed to your orator another deed for the purpose of correcting errors in the first in respect to the description of several of said parcels of land, which last-mentioned deed was also,
6 on the 20th day of April, 1878, recorded in said probate office of Escambia county, and thereupon your orator entered into, and has since retained, the peaceful possession of all said lands.

And your orator further shows unto your honors that, on the 18th of February, 1875, the respondent, James W. Mann, instituted against the said corporation an action by attachment in the circuit court of Escambia county, State of Alabama; that on the same 18th of February, 1875, the said McDuff Mann instituted against said corporation a like action in the same court; that on the 19th of the same February the respondent, Henry Morningstar, instituted against said corporation a like action in the same court; that on the 22nd of the same February the respondent, Young M. Rabb, instituted against said corporation a like action in the same court; and on the same last-mentioned day the said respondent, Young M. Rabb and McDuff Mann, instituted against said corporation a like action in the same court.

And your orator further alleges that all the writs of attachment issued in said suits, respectively, were, on the same day,
7 they were issued, levied upon the above-described lands, embraced, as aforesaid, in said assignee's deeds to your orator, as well as upon certain personal estate of said corporation then being in said county of Escambia, Alabama; and that said sheriff took possession of said personal property, but did not take actual possession of said lands—they being wild and unfenanted—or any other possession than such as might be inferred or implied from the levy of said writs of attachment thereon.

And your orator further shows unto your honor that before C. Edgar Smith was elected assignee of said bankrupt corporation, he was, on the 2nd day of March, A. D. 1875, appointed receiver of the estate of said bankrupt, and whilst such receiver, and before his election as assignee, he applied for and obtained from the district court for the southern district of Alabama an order restraining and enjoining the said respondents, as well as the then sheriff of said county of Escambia, from interfering with the property of said bankrupt until the further order of said last-mentioned district court; that thereupon the said sheriff abandoned all control
8 of the said personal property, and the said Smith, by his agents, took possession of and disposed of the same as a part of the bankrupt's estate; and thenceforth the said Smith, as receiver, and afterwards as assignee, regarded and believed the said abandonment by said sheriff of said personalty to be a formal recognition by the respondents, as well as said sheriff, of the fact that said attachments in respect to the lands levied upon, as well as said personalty, were dissolved by the force and effect of section 5044 of the Revised Statutes of the United States, until during the year 1878, he ascertained that it was the intention of the said respondents, other than said sheriff, to prosecute their several actions, aforesaid, to final judgments, with a view of satisfying the same by a sale of said lands in defiance of the said proceedings in bankruptcy, and the title to said lands acquired by your orator thereunder.

And your orator further alleges that said Smith, as assignee aforesaid, being desirous of preventing a cloud from being thrown over your orator's title to said lands by a sale thereof in said
9 attachment suits, and in order to prevent the possibility of

such a sale, did, at the fall term, A. D. 1878, of said circuit court of Escambia county, State of Alabama, by attorney, make a motion to be made a party to said attachment suits with the view of causing the said attachments to be formally dismissed; that said motion was based upon the certified copy of the deed of assignment executed to said Smith, assignee, by the said register in bankruptcy under section 5044 of the Revised Statutes of the United States, as aforesaid; but said court refused to grant said motion, assigning as a reason for its refusal that said motion had not been made within two years from the date of the appointment of said assignee, as required by section 5057 of said Revised Statutes of the United States.

And your orator further shows unto your honors that during the March term (A. D. 1879) of said circuit court of Escambia county, Alabama, petitions, as required by act of Congress of March 3rd, 1875, for the removal of said several attachment suits from the said circuit court of Escambia county to this court were presented
10 to the said State circuit court by the defendant in said suits, which was a corporation created and existing under the laws of the State of New York, as above stated, whilst the plaintiffs in said several attachment suits were, at the time the same were instituted and the said petitions for removal filed, citizens of the State of Alabama; that said petitions, accompanied by good and sufficient bonds, as required by said act of Congress of 3rd of March, 1875, were refused although presented to said court, not only before the trial of any of said suits, but before any plea had been filed or judgment by *nil dicit* had been rendered in any of them by said State circuit court; and afterwards, during the said term of the said State circuit court, judgments by *nil dicit* were rendered in all said attachment suits, writs of inquiry were executed, and final judgments rendered in each of said cases of more than five hundred dollars, besides costs of suit.

And your orator further shows unto your honors that in and by said judgments the said lands attached as aforesaid were condemned
11 to be sold to satisfy the same according to the practice obtaining in cases where the attachment lien is continued in full force from the levy of the attachment up to final judgment and sale, and in total disregard of the fact that the attachment lien in each of said cases had been discharged by the dissolution of the attachment by operation of section 5044 of the Revised Statutes of the United States.

And your orator further shows unto your honor that on the 24th of June, A. D. 1879, the clerk of said circuit court of Escambia county made and issued to the said sheriff thereof, not writs of *fieri facias* founded on judgments, but an order to advertise and sell said lands in obedience to the judgments of said State court condemning said lands to be sold as aforesaid on the first Monday of August next, to satisfy said judgments rendered in said attachment suits; that said sheriff has advertised, by posting in said county, said lands for sale on said first Monday of August next, and that your orator believes said sheriff intends to and will sell said lands on that day.

And your orator further shows unto your honors that such sale

will lead to the destruction of the timber on said lands by
12 irresponsible trespassers, hitherto restrained by complainant with difficulty and great expense, but who will then be encouraged by the fancied immunity afforded them by the pretended titles to be acquired under said sale.

And your orator further shows unto your honors that said lands consist of ninety odd sections, or parts of sections, which, if sold by said sheriff under said order of sale, would probably be purchased by many different persons, and thus a multiplicity of suits would be rendered necessary for the vindication of complainant's title.

And your orator further shows unto your honors that said respondents, other than said sheriff, are general creditors of said bankrupt, and are parties to said bankrupt proceedings in which said lands were sold and bought by your orator; and that said lands were sold in bankruptcy for the benefit of respondents, other than said sheriff, as well as the other general creditors of said bankrupt.

And your orator further shows unto your honors that said lands are only valuable for the pine timber with which they are covered, and were bought with an extensive saw-mills, and as a nec-
13 essary and indispensable adjunct thereof, and are now held and owned by your orator in connection with said mill; that said order of sale has thrown a cloud on his title, and has already greatly impaired the value of said property and interferred with your orator's business; and that a sale of said lands by the sheriff under said order of sale will deepen that cloud and further depreciate the value of said property and impair your orator's business and credit; for which injury your orator cannot be indemnified by respondents, who, other than said sheriff are insolvent, and said sheriff's bond and estate would be insufficient to indemnify your orator.

And your orator submits to your honors whether a title thus acquired by him under the laws of the United States, in the course of their regular and appointed administration by one of their courts, can be thus nullified by the action of State officers, in willful defiance of those laws.

To the end, therefore, that the said respondents may true, direct, and perfect answers make to the matters and things herein contained;

And that the said sheriff and his agents and deputies may be enjoined from selling said lands, or any part or parcel thereof,
14 and that your orator may have such other and further relief as unto your honors may seem meet and agreeable to equity and good conscience:

May it please your honors to grant unto your orators the writ of subpœna, to be issued from this court and directed to the said John A. Helton, sheriff of said county of Escambia, in the State of Alabama, the said Young M. Rabb, McDuff Mann, James W. Mann, and Henry Morningstar, commanding them, and each of them, under a certain penalty, to be and appear before this honorable court, upon a day to be therein named, to answer this bill of com-

plaint, and abide such further order as your honors may make in the premises; and, also, that a writ of injunction be issued to the said sheriff, his agents and deputies, as above prayed.

GEORGE H. PATRICK &
RICHARD L. CAMPBELL,
Solicitors for Complainant.

NORTHERN DISTRICT OF FLORIDA, AT PENSACOLA:

Before the undersigned, a United States commissioner for said district, personally appeared Richard L. Campbell, as agent
15 and solicitor of Dana Sargent, complainant in the above bill, and made oath that he has read the said bill, and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

In testimony whereof, I have hereunto set my hand and seal, this 9th day of July, 1879, and of the Independence of the United States the 103rd.

[SEAL.] GEORGE E. WENTWORTH,
Clerk U. S. Courts and U. S. Commissioner Circuit Court of the United States, Fifth Judicial Circuit, Northern District of Florida.

Filed July 10th, 1879. N. W. TRIMBLE, *Clerk.*

16 *Notice of Application.*

In the Circuit Court of the United States for the Southern District of Alabama.

DANA SARGENT, who is a citizen of the State of New Hampshire,
vs.
JOHN A. HELTON, Sheriff of Escambia County, State of Alabama; McDuff Mann, Henry Morningstar, James Mann, Young M. Rabb, and said Rabb and McDuff Mann, under style of Rabb & Mann, who are all citizens of the State of Alabama. } Bill for Injunction.

To said John A. Helton, sheriff, as aforesaid;

To Messrs. Whitehead & Davidson, attorneys of said McDuff Mann, who is the plaintiff in an attachment suit in the circuit court of Escambia county, State of Alabama, wherein the Pensacola Lumber Company is the defendant;

17 To Messrs. Kelly & Gamble, attorneys of said Henry Morningstar, who is the plaintiff in an attachment suit in the said circuit court of Escambia county, wherein the Pensacola Lumber Company is the defendant;

To Messrs. Whitehead & Davison, attorneys of said James Mann, who is the plaintiff in an attachment suit in the said circuit court of Escambia county, wherein the Pensacola Lumber Company is the defendant;

To Messrs. Kelly & Gamble, attorneys of said Young M. Rabb, who is the plaintiff in an attachment suit in the said circuit court of Escambia county, wherein the Pensacola Lumber Company is the defendant;

To Messrs. Whitehead & Davison, attorneys of said Rabb and McDuff Mann, under the style of Rabb & Mann, who are the plaintiffs in an attachment suit in said circuit court of Escambia county, wherein the Pensacola Lumber Company is the defendant:

18 You will please take notice of the filing of a bill of complaint this day in the case first above stated in the circuit court of the United States for the southern district of Alabama, at Mobile, to enjoin said sheriff from selling the lands attached in said attachment suits; and also that on Saturday next, the 12th inst., at 11 o'clock a. m., at chambers in the city of Montgomery, the said complainant, said Dana Sargent, by his solicitors, will apply to the Hon. John Bruce, as one of the judges of said United States circuit court for a temporary injunction or restraining order to prevent the sale of said lands by said sheriff.

July 10th, 1879.

GEO. H. PATRICK &
RICH'D L. CAMPBELL,
Sol's for Complainant.

STATE OF ALABAMA, *Escambia County:*

F. B. Bonifay, being duly sworn, says: That he did, on this 10th day of July, A. D. 1879, in said county, *and* give into hand copies of the within notice to I. N. Davidson, of the within-named law firm of Whitehead aud Davidson, and also to John A. Helton,
19 sheriff of said county, respectively, and that he called at the office of M. B. Kelly, of the within firm of Kelly and Gamble, to hand a similar — to said M. B. Kelly, and ascertained that he was absent out of the State.

F. B. BONIFAY.

Sworn to and subscribed before me, this 10th day of July, 1879.

JOHN RUPERT,
Notary Public.

Filed July 16th, 1879.

N. W. TRIMBLE, *Clerk.*

20 *Order for Temporary Injunction.*

In the Circuit Court of the United States for the Southern District of Alabama, in the Fifth Circuit. In Equity.

DANA SARGENT, Complainant,
against
JOHN A. HELTON, Sheriff of Escambia County, State of Alabama; McDuff Mann, Henry Morningstar, James Mann, Young M. Rabb, and Rabb and Mann, Defendants.

On bill for injunction against sale of lands by sheriff. Filed July 10, 1879.

Upon reading the sworn bill of complaint filed in this cause, and

after hearing what was said by Messrs. Richard L. Campbell and Geo. H. Patrick, solicitors for complainant, and by Messrs. J. M. Whitehead and H. A. Herbert, solicitors for defendants, and it appearing satisfactorily to the court that due notice of this application for injunction has been given to the several defendants herein, and that complainant has not had reasonable time to apply to the circuit court for said district for said writ, and that sufficient grounds for the order of injunction prayed for exist—

It is ordered, that upon complainant's filing a good and sufficient bond, with sureties, in the sum of three thousand dollars, to be approved by the clerk of the circuit court of the United States
21 for the southern district of Alabama, or his deputy, conditioned as required by law, for the payment to the said defendants of all damages and costs which they may sustain by the suing out of such injunction, if the same shall be disallowed at the final hearing of said cause, the said clerk, under his signature and the seal of said circuit court, issue the writ of injunction, directed to the said John A. Helton, sheriff of Escambia county, Alabama, his agents, deputies, and successors, requiring and commanding him and them to refrain from selling the said lands, or any part or parcel thereof mentioned and described in the said bill of complaint in this cause filed, until the circuit court of the United States for the southern district of Alabama next ensuing, or until the further order of said circuit court.

At chambers, Montgomery, July 15th, 1879.

JOHN BRUCE,
U. S. District Judge for Alabama.

RICH'D L. CAMPBELL &
GEO. H. PATRICK,
Solicitors for Complainant.

Filed July 16th, 1879. N. W. TRIMBLE, *Clerk.*

22 *Subpœna in Equity.*

UNTED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit and the District of Alabama, at Mobile. In Equity.

DANA SARGENT, Complainant,
vs.
JOHN A. HELTON, Sheriff of Escambia Co., Ala.; YOUNG M. RABB, MCDUFF MANN, JAMES W. MANN, & HENRY MORNINGSTAR, Defendants.

The President of the United States of America to John A. Helton, sheriff of Escambia Co., Ala., Young M. Rabb, McDuff Mann, James W. Mann, and Henry Morningstar, who are citizens of the district aforesaid and of the State of Alabama, Greeting:

You, and each of you, are hereby commanded and strictly enjoined, that laying all other matters aside, and notwithstanding any

other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the fifth judi-
cial circuit and southern district of Alabama, at Mobile, at
23 the clerk's office of the said court, in the city of Mobile, at
rules, to be had on the first Monday of August (being the 4th day of said month) next, to plead to, answer, or demur to a bill of complaint exhibited against you in the said court by Dana Sargent, who is a citizen of the State of New Hampshire, and to do further and recive what the said court shall have considered in that behalf, and this you are not to omit, and have there then this writ.

To the marshal of the United States for said district to execute.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Mobile, this the 16th day of July, in the year of our Lord one thousand eight hundred and seventy nine and the Independence of the United States of America the one hundred and three.

[SEAL.] Attest: N. W. TRIMBLE, *Clerk.*

NOTE.—The defendant is required and hereby notified to
24 enter appearance in the above entitled cause in the clerk's
office of said court in the custom-house building, in the city of Mobile, on or before the rule day next ensuing, to wit, the first Monday of August, anno Domini, 1879, or the bill may be taken *pro confesso* against them.

N. W. TRIMBLE, *Clerk.*

GEO. H. PATRICK &
RICH'D L. CAMPBELL,
Complainants Solicitors.

Received July 26, 1879, and executed on the 29th day of July by handing a copy of the within —— in equity to J. W. Mann, near Bladon Springs, Ala.

GEO. TURNER,
U. S. Marshal.
By GEO. W. LEWIS, *Deputy*

Ret'd and filed Aug. 4th, 1879.

N. W. TRIMBLE, *Clerk.*

Executed by serving copy of the within subpœna on Jno. A. Holton, sheriff, on 17th day of July, 1879, at Pollard; on Y. M. Rabb, July 19, 1879, at Evergreen, Ala.; McDuff Mann and J. W. Mann, not found; on Henry Morningstar, on July 17, A. D. 1879.

(S'g'd) GEO. TURNER,
U. S. Marshal.
By F. B. BONIFY,
Sp'l Deputy.

25 *Complainant's Bond for Injunction.*

Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JOHN A. HELTON, Sheriff of Escambia County, Alabama; McDUFF MANN, HENRY MORNINGSTAR, YOUNG M. RABB, JAMES MANN, and RABB and MANN, Defendants.

Know all men by these presents, that we, Dana Sargent, of Nashua, Hillsborough county, New Hampshire, as principal, and A. C. Conn, and W. F. McCormick, of Escambia county, Florida, and John H. Stewart and Walter C. Arthur, of Montgomery county, Alabama, and ——— as sureties, are held and firmly bound unto John A. Helton, sheriff of Escambia county, Alabama, and his successors in office, and unto McDuff Mann, Henry Morningstar, Young M. Rabb, James Mann, and Rabb and Mann, in the sum of three thousand dollars, lawful money of the United States of America, to be paid to the said John A. Helton, sheriff, and his successors, McDuff Mann, Henry Morningstar, Young M. Rabb, James Mann, and Rabb and Mann, their executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by
26 these presents. Sealed with our seals, and dated the twenty-fifth day of July, anno Domini eighteen hundred & seventy-nine.

Whereas the above-named Dana Sargent has applied to the circuit court of the United States for the southern district of Alabama, for an injunction to stay the sale by the said John A. Helton, sheriff of Escambia county, Alabama, his agents, deputies, or successors, or any part or parcel of the lands mentioned and described in the bill of complaint in said suit in the caption hereof referred to, until the circuit court of the United States for the southern district of Alabama, next ensuing, or until the further order of said court:

Now, the condition of this obligation is such that if the above-bounden Dana Sargent shall well and truly pay unto the said John A. Helton, sheriff, and his successors, McDuff Mann, Henry Morningstar, Young M. Rabb, James Mann, and Rabb and Mann, their executors, administrators, and assigns, all such damages and costs which they or either of them may sustain by the suing out of such injunction, if the same shall be dissolved at the final hearing of said cause, then this obligation to be void; otherwise to remain in full force and virtue.

DANA SARGENT. [L. S.]
By E. E. BATES,
His Agent & Attorney in Fact.
A. C. CONN,
By E E BATES,
27 *His Agent & Attorney in Fact.*
W. F. McCORMICK. [L. S.]
JOHN H. STEWART. [L. S.]
W. C. ARTHUR. [L. S.]

Signed, sealed, and delivered in the presence of—
RICH'D H. FUES.
RICH'D L. CAMPBELL.
W. H. HUNTER.
GEO. H. PATRICK.

I approve the foregoing bond, as to form and sufficiency, at Mobile, this twenty-eight day of July, A. D. 1879.

[SEAL.] N. W. TRIMBLE,
Clerk United States Circuit Court
for the Southern District of Alabama.

UNITED STATES OF AMERICA, } 88:
Northern District of Florida. }

W. F. McCormick, being duly sworn, on oath says: That after deducting all of his just debts and liabilities, he is worth the sum of three thousand dollars over and above the amount exempted from levy and sale under execution by the constitution and laws of the State of Florida.

W. F. McCORMICK.

Subscribed and sworn to before me, at Pensacola, this twenty-third day of July, A. D. 1879, and I certify that A. C. Conn and W. F. McCormick are each good and sufficient sureties for three thousand dollaas, the penalty of the injunction bond in case of
28 Sargent against Helton *et al.*, now pending in United States circuit court at Mobile, Alabamr.

WALTER TATE,
Commissioner United States Circuit,
Northern District of Florida.

UNITED STATES OF AMERICA } 88:
Middle District of Alabama. }

John H. Stewart and Walter C. Arthur, freeholders, and residents of Montgomery county, Alabama, being duly sworn, each for himself, says: That after deducting all of his just debts and liabilities, he is worth the sum of three thousand dollars over and above the amount exempted from levy and sale under execution by the constitution and laws of the State of Alabama.

JOHN H. STEWART.
WALTER C. ARTHUR.

Subscribed and sworn to before me, at Montgomery, this twenty-fourth day of July, A. D. 1879, and I certify that said affiants are good and sufficient sureties for the penalty of the injunction bond in case of Sargent against Helton *et al.*, now pending in the United States circuit court, at Mobile, that is to say, good for three thousand dollars each.

W. H. HUNTER,
Commisssoner United States Circuit Court,
Middle District of Alabama.

Filed July 28th, 1879.

29 *Writ of Injunction.*

Circuit Court of the United States for the Southern District of Alabama.

DANA SARGENT, Complainant
against
JOHN A. HELTON, Sheriff of Escambia County, Alabama; McDuff Mann, Henry Morningstar, Young M. Rabb, James Mann, and Rabb and Mann, Defendants. } In Equity.

The President of the United States of America to the marshal of the United States for said southern district of Alabama, Greeting:

You are hereby commanded to make known to John A. Helton, sheriff of Escambia county, State of Alabama, his agents, deputies, and successors, that under and by virtue of an order, made on the 15th day of July, A. D. 1879, by the Hon. John Bruce, judge of the district court of the United States for said southern district of Alabama, on the application of the complainant, on a bill filed by him in said circuit court for the southern district of Alabama, on the equity side thereof, wherein Dana Sargent, a citizen of the State of New Hampshire, is complainant, and John A. Helton, sheriff
30 of Escambia county, Alabama; McDuff Mann, Henry Morningstar, Young M. Rabb, James Mann, and Rabb and Mann, citizens of Alabama, are defendants, be, and they are enjoined and restrained until the circuit court of the United States for the southern district of Alabama, next ensuing—that is to say, until the December term, 1879, of said court, and until the further order of said circuit court, from selling under any writ of *fieri facias, venditioni exponas*, order of sale, or other writ or process by whatever name it may be called, from any State court, and especially from the circuit court of Escambia county, State of Alabama, the following described lands, or any part or parcel thereof, situated in said county of Escambia, Alabama, or the lands intended to be described hereby—that is to say, an undivided half of a large body of land known in the United States surveys as section three (3), except the south half of the southwest quarter, and sections eleven (11) and thirteen (13), township one (1) north, range seven (7) east; section three (3), nine (9), except the northeast ¼ of the northwest ¼; twenty-seven (27), twenty-one (21); the east ½ of section twenty-nine (29), thirty-three (33), the west ½ of section thirty-five (35), the west ½ of section fifteen (15); all of section seventeen (17),
31 except the northeast ¼ of the northeast ¼, in township two (2) north, range seven (7) east, and section nineteen (19), township one (1) north, range eight (8) east, and the west half of section thirty-five (35), township three (3) north, range seven (7) east, and the whole of the following lands, known in the United States as the north ½ of the southeast ¼ of section one (1), sections five (5) and nine (9), fifteen (15), except the northwest ¼ of the northeast ¼; sections seven (7), seventeen (17), thirty-one (31), thirty-three (33), in township one (1) north, range seven (7) east; sections one (1) and

seven (7), eleven (11), except east ½ of northwest ¼ and the west ½ of the northeast ¼, thirteen (13), the east half of section fifteen (15), nineteen (19), the east ½, and the east ½ of west ½ of section twenty-three (23), section twenty-five (25), the west ½ of section twenty-nine (29), all of section thirty-one (31), except the north ½ of the northwest ½, east half of section thirty-five (35), in township two (2) north, range seven (7) east, section twenty-five (25), east ½ of section thirty-five (35), in township three (3) north, range seven (7) east, the east ½ of section three (3), sections five (5), nine (9), fifteen (15), seventeen (17), twenty-one (21), the west ½ of the west ½ of section twenty-three (23),
32 the east ½ of the northeast ¼, the west ½ of the west ½, the east ½ of the southwest ¼, and the southwest ¼ of the southeast ¼ of section twenty-seven (27), the south ½ and the northwest ¼ of section twenty-nine (29), the north ½ of section thirty-five (35), in township one (1) north, range eight (8) east; sections one (1), three (3), five (5), seven (7), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), the west half of section thirty-five (35), in township two (2) north, range eight (8) east; sections one (1), three (3), five (5), nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), nineteen (19), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), twenty-nine (29), thirty-one (31), thirty-three (33), thirty-five (35), in township three (3) north, range eight (8) east; sections five (5), seven (7), nineteen (19), twenty-nine (29), except the northwest ¼ of the southwest ¼, seventeen (17), the east half of section thirty-one (31), in township two (2) north, range nine (9) east; sections five (5), seven (7), seventeen (17), except the northwest ¼ of the southwest ¼, nineteen (19), twenty-nine (29), thirty-one (31), in township three (3) north, range nine (9) east—

Levied upon and published for sale by the said John A. Helton, as sheriff of said county, under a certain writ or process or
33 writs, styled order of sale, issued on certain judgment or judgments rendered in the circuit court of Escambia, Alabama, in favor of said James Mann, McDuff Mann, Henry Morningstar, Young M. Rabb, and Rabb and Mann against the Pensacola Lumber Company, a corporation under the laws of the State of New York, at the spring or March term, 1879, of said circuit court of Escambia county, for thirty-seven thousand five hundred and thirty-five dollars and thirty-six cents ($37,535.36), or about that sum, and costs, and described in said levy and publication of sale, substantially, as to satisfy a judgment recovered by McDuff Mann, Henry Morningstar, Young M. Rabb, James Mann, and Rabb and Mann against the Pensacola Lumber Company.

Herein fail not, and have this writ, with your endorsement thereon of how you have executed the same, at the next term of said circuit court of the United States for the southern district of Alabama, to be held on the fourth Monday of December, anno Domini one thousand eight hundred and seventy-nine.

Witness the Honorable Morrison R. Waite, Chief Justice Supreme Court of the United States, and the seal of said circuit court,

34 at Mobile, in said district, this twenty-eighth day of July, A. D. 1879, and of the Independence of the United States the one hundred and fourth year.

Issued the twenty-eighth day of July, A. D. one thousand eight hundred and seventy-nine.

[SEAL.] Attest: N. W. PRINGLE,
Clerk Circuit Court of the United States for the Southern District of Alabama.

RICH'D L. CAMPBELL &
GEO. H. PATRTICK,
Solicitors for Camplainant.

Received in office, this 28th day of July, A. D. 1879, and the within writ of injunction served on the defendant, John A. Helton, sheriff of Escambia county, Ala., at the town of Pollard, within the southern district of Alabama, the 31st day of July, A. D. 1879, by delivering to and leaving with the said defendant, John A. Helton, a duly certified true copy thereof, and at the same time exhibiting to said Helton the original, with the seal of court attached.

GEORGE TURNER,
U. S. Marshal.
By CHAS. B. JOHNSTON,
Deputy U. S. Marshal.

Filed Aug. 1st, 1879. N. W. TRIMBLE,
Clerk U. S. Cir. Court.

35 *Subpœna in Equity.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit and the Southern District of Alabama, at Mobile. In Equity.

DANA SARGENT, Complainant,
vs.
JOHN A. HELTON, Sheriff of Escambia County; YOUNG M. RABB, McDUFF MANN, HENRY MORNINGSTAR, JAMES MANN, Defendants.

The President of the United States of America to John A. Helton, sheriff of Escambia county, Ala.; Young M. Rabb, McDuff Mann, Henry Morningstar, and James Mann, who are citizens of the district aforesaid, and of the State of Alabama, Greeting:

You, and each of you, are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear before the judge of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at Mobile, at the clerk's office of the said court in the city of Mobile, at rules to be had on the first
36 Monday of September (being the first day of said month) next, to plead to, answer, or demur to a bill of complaint exhibited against you in the said court by Dana Sargent, who is a

[citizen] of the State of New Hampshire, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit. And have there then this writ.

To the marsdal of the United States for said district to execute.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Mobile, this the 30th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] Attest: N. W. TRIMBLE, *Clerk.*

NOTE.—The defendant is required and hereby notified to enter appearance in the above-entitled cause, in the clerk's office of said court, in the Custom-house building, in the city of Mobile, on or before the rule day next ensuing, to wit, the first Monday of September, anno Domini 1879, or the bill may be taken *pro confesso* against *against* them.

N. W. TRIMBLE, *Clerk.*

GEO. H. PATRICK &
RICH'D L. CAMPBELL,
Complainant's Solicitors.

Filed Aug. 4, 1879. N. W. TRIMBLE, *Clerk.*

Executed by serving copy of the within subpœna on McDuff Mann, this 31st day of July, A. D. 1879.

(Signed) GEO. TURNER,
U. S. Marshal,
By AUG. BOULLEMET,
Deputy.

37 *Amendment to Bill of Complaint.*

In the Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JOHN A. HELTON, Sheriff of Escambia County, Ala.; McDuff Mann, Henry Morningstar, James Mann, Young M. Rabb, and Rabb and Mann, Defendants.

The complainant amends his bill of complaint herein, by inserting, after the twelfth line of the fourth page thereof, the words and figures, "said lands being, as orator is informed and believes, of the value of twenty-five thousand dollars ($25,000.00)," and writes the same with red ink upon said fourth page of the original bill.

RICH'D L. CAMPBELL &
GEO. H. PATRICK,
Solicitors for Complainant.

UNITED STATES OF AMERICA, *Southern District of Alabama.*

George H. Patrick, solicitor of Dana Sergent, complainant as aforesaid, being duly sworn, on oath says: That the above
38 amendment, as to the matters stated on information and belief, he believes to be true.

GEO. H. PATRICK.

Sworn to and subscribed before me, at Mobile, this 31st day of July, A. D. 1879.

HENRY S. SKAATS,
Commissioner U. S. Circuit Court, S. D. Ala.

Filed August 1st, 1879. N. W. TRIMBLE, *Clerk.*

Appearance.

Circuit Court of the United States for the 5th Judicial Circuit and Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
vs.
JOHN A. HELTON, Sheriff of Escambia Co., Ala.; Young ——, McDuff Mann & James W., & Henry Morningstar.

We appear for the defendants, Jno. A. Helton, sheriff of Escambia Co., Ala.; Young ——, McDuff Mann & James W., & Henry Morningstar.

SAMUEL B. BROWNE,
Sol. for Defendants.
R. INGE SMITH,
Of Counsel.

Filed Aug. 2nd, 1879. N. W. TRIMBLE, *Clerk.*

39 *Demurrer.*

DANA SARGENT
vs.
JOHN A. HELTON, Sheriff of Escambia County; McDUFF Mann, Henry Morningstar, James Mann, Young M. Rabb & Rabb and Mann. } In Equity.

And now come the defendants, by their counsel, and demur to the complainant's original bill, and assign as grounds of demurrer as follows, to wit:

1. There is no equity in the bill.

2. For each of the wrongs complained there was a full, complete, and adequate remedy at law.

3. If the circuit judge of the State court was wrong in not allowing the assignee to make himself a party, this was error revisable on an appeal to the supreme court of the State, and affords no ground for the interposition of a court of equity.

4. The judge of the district had no jurisdiction or authority to grant an injunction to restrain the parties from proceeding at law in the State court to judgment on their debt on account of the bankrupts of the defendants in that case, but such authority is
40 vested exclusively by the bankrupt law in the bankrupt court, which is shown by the bill to have been the United States district court for the district of New York.

5. That if said district judge did have the authority to grant such writ, yet this is no proper ground for the interposition of the court

of equity, because it was disobeyed, since by suggesting this to the State court by way of a plea it would have had the effect of stopping the further progress of said cause or said court, or if disregarded would have been good ground for a revision of the action of that court on an appeal to the supreme court of the State.

6. That if such injunction was absolute it annulled the levy and all of the other proceedings in the State court *ab initio*, if it was of any validity at all, and a motion in said State court could and should have been made to set aside the levy; which motion, if denied, was revisable on appeal to the supreme court of the State.

7. That the bill now filed seeks simply to make a defense that could have been made in the State court to the original attachment suits, and of which said State court could take cognizance with power to determine fully all of the rights of the parties.

41 8. If said sale of said lands had in fact been enjoined by said district judge, which said fact was not brought to the attention of the court by an appropriate plea on the trial of the cause for that purpose, yet there was full, complete, and adequate remedy at law by an application for a supersedeas to the judge of said State court, which, if denied, was revisable on an appeal to the supreme court.

9. That said bill seeks to have this court protect the property of a bankrupt, who was adjudicated a bankrupt in the State of New York by the United States district court, and which said bankrupt court is vested with full, ample, complete, and exclusive authority over the entire estate and interest of the bankrupt to the full extent of affording all the relief prayed for in this bill of complaint, and *a fortiori* this court has no jurisdiction.

10. That if the State court erred in not allowing the causes to be removed to the United States court, as is alleged in the bill, this action of said court, if wrong, was revisable on appeal to the supreme court of the State, and does not afford any ground for the interference of a court of equity.

42 11. That if said attachment suits were levied within four months before the adjudication in bankruptcy, this would have constituted a valid defense to said causes in said State court, and affords no proper ground for the interference of a court of equity.

J. M. WHITEHEAD,
HERBERT & GAMBLE,
ANDERSON & BOND,
Solicitors for Def'ts.

The undersigned, counsel for the defendants, do hereby certify that the foregoing demurrer, in our opinion, is well founded in law, and is not interposed for delay.

J. M. WHITEHEAD,
HERBERT & GAMBLE,
ANDERSON & BOND,
For Def'ts.

Personally came James W. Mann, one of the defendants, acting for himself and the other defendants in this cause, & who being duly sworn, says, that the foregoing demurrer is not interposed for delay, but, as he is advised, to reach the substantial merits of the cause.

J. W. MANN.

Subscribed and sworn to before me, this 30th day of August, 1879.
HENRY S. SKAATS,
U. S. Commissioner.

Filed Aug. 30th, 1879. N. W. TRIMBLE, *Clerk.*

43 *Amendments to Bill and Agreement as to Hearing, &c.*

In Circuit Court of the United States, for the Southern District of Alabama, at Mobile.

DANA SARGENT, Complainant,
against
JNO. A. HELTON, Sheriff; JAMES MANN, YOUNG M. RABB, HENRY MORNINGSTAR, MCDUFF MANN, RABB and MANN.
} On Bill in Equity for Injunction.

Complainant amends the sixth paragraph of his bill of complaint:

1. By inserting about the fifth line the words, "as required by act of Congress of March 3rd, 1875."

2. By inserting about the twenty-second line, the words, "as required by said act of Congress of March 3rd, 1875."

3. By adding to the last line of said paragraph, the words, "in each of said cases of more than five hundred dollars besides costs of suit."

And said amendments are written in red ink upon the said original bill of complaint, so that said paragraph reads:

And your orator shows unto your honor that during the March term, A. D. 1879, of said circuit court of Escambia county, Alabama, petitions, as required by act of Congress of March 3rd, 1875, for the removal of said several attachment sūits from the said circuit court of Escambia county to this court, were presented to the said circuit court by the defendant in said suits, which was
44 a corporation created and existing under the laws of the State of New York, as above stated, whilst the plaintiffs in said several attachment suits were at the time the same were instituted, and the said petitions for removal filed, citizens of the State of Alabama; that said petitions, accompanied by good and sufficient bonds, as required by said act of Congress of March 3rd, 1875, were refused, although presented to said court, not only before the trial of any of said suits, but before any plea had been filed, or judgment by *nil dicit* had been rendered in any of them by said State circuit court; and afterwards, during the said term of the said State circuit court, judgments by *nil dicit* were rendered in all of said attachment suits, writs of inquiry were executed, and final judgments

rendered in each of said cases of more than five hundred dollars, besides costs of suit.

The hearing of the demurrer to the bill of complaint interposed by the defendants, is to be heard at Montgomery, at such date near, and, if practicable, not later than the first of February, 1880, as may be agreeable to counsel and to the court, and the said cause, as well as the injuction granted by the honorable the district judge, to stand continued at the pending December term at Mobile, unless it shall be practicable to make earlier and final disposition thereof.

Montgomery, January 5th, 1880.

Agreed to: GEO. H. PATRICK, *For Compl't.*
CLOPTON, HERBERT & CHAMBERS,
For Def'd'ts.

Filed January 19th, 1880. N. W. TRIMBLE, *Clerk.*

45 *Petition and Order for Amendment to Bill.*

Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JNO. A. HELTON, Sheriff; MCDUFF MANN, HENRY MORNINGSTAR, JAMES MANN, YOUNG M. RABB, and RABB and MANN,

Comes the said complainant, Dana Sargent, and respectfully petitions for an order allowing him to amend the bill of complaint in the above-entitled cause according to the rules of practice in equity for the courts of the United States.

July 14th, 1880.

DANA SARGENT, *Complainant,*
By RICH'D L. CAMPBELL &
GEO. H. PATRICK,
His Solicitors.

To the Hon. John Bruce, one of the judges of said court, at chambers.

AT CHAMBERS, *July 14th,* 1880.

Ordered, that said complainant, Dana Sargent, have leave to amend his said bill of complaint on or before the rule day, the first Monday in August, A. D. 1880.

JOHN BRUCE, *U. S. Judge.*

Filed August 2nd, 1880. N. W. TRIMBLE, *Clerk.*

46 *Amendments to Bill by Leave of Court.*

In the Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JOHN A. SHELTON, Sheriff; JAMES W. MANN, YOUNG M. RABB, HENRY MORNINGSTAR, MCDUFF MANN, RABB and MANN, Defendants.

The complainant, by leave of the court, first had an- obtained under the rules by an order which is filed, amends his bill of complaint—

By inserting at the 22nd line of the first page the initial letter "W." so that James Mann shall read James W. Mann.

By inserting at the end of the 2nd paragraph, at the 15th line of the 5th page, the words "and thereupon your orator entered into, and has since retained, the peaceful possession of all of said lands."

By striking out of the 6th paragraph, at line 18 of page 8, the words "your orator," and inserting instead the words "said Smith, assignee."

By striking out of the 7th paragraph, at line 9 of page 9,
47 the word "defendants," and inserting instead the word "plaintiffs."

By inserting after the 7th paragraph, at line 25 of page 9, to be designated as the 8th paragraph of the bill, the following:

"And your orator further shows unto your honors that in and by said judgments the said lands attached as aforesaid were condemned to be sold to satisfy the same according to the practice obtaining in cases where the attachment lien is continued in full force from the levy of the attachment up to final judgment and sale, and in total disregard of the fact that the attachment lien in each of said cases had been discharged by the dissolution of the attachment by operation of section 5044 of the Revised Statutes of the United States."

By inserting the word thereof at line 30 of page 9 in the original 8th, now 9th, paragraph of the bill the words "not writs of *fieri facias* founded on said judgments, but"—and by inserting at line 31 of same page and paragraph, after the word lands, the words "in obedience to the judgments of said State court condemning said lands to be sold as aforesaid."

By inserting at line 8 of page 10, after orator, the word "further," and by inserting at line 12 of same paragraph and page, the words "by complainant" after restrained.

48 By inserting after said last-mentioned paragraph, at line 16 of page 10, the following, to be designated respectively as paragraphs 11, 12, and 13 of the bill of complaint:

11. And your orator further shows unto your honors that said lands consist of ninety odd sections or parts of sections, which, if sold by said sheriff, under said order of sale, would probably be purchased by many different persons, and thus a multiplicity of suits

would be rendered necessary for the indication of complainant's title.

12. And your orator further shows unto your honors that said respondents, other than said sheriff, are general creditors of said bankrupt, and are parties to said bankrupt proceeding in which said lands were sold and bought by your orator; and that said lands were sold in bankruptcy for the benefit of respondents, other than said sheriff, as well as the other general creditors of said bankrupt.

13. And your orator further shows unto your honors that said lands are only valuable for the pine timber with which they are covered, and were bought with an extensive saw-mill and as a necessary and indispensable adjunct thereof, and are now held and owned by your orator in connection with said mill; that said
49 order of sale has thrown a cloud on his title, and has already greatly impaired the value of said property and interfered with your orator's business, and that a sale of said lands by the sheriff under said order of sale will deepen that cloud and further depreciate the value of said property and impair your orator's business and credit; for which injury your orator cannot be indemnified by respondents, who, other than said sheriff, are insolvent, and said sheriff's bond and estate would be insufficient to indemnify your orator.

And said amendments are written with red ink in their appropriate places upon the original bill.

RICH'D L. CAMPBELL,
GEO. H. PATRICK,
Solicitors for Complainant.

UNITED STATES OF AMERICA, *Southern District of Alabama:*

George H. Patrick, solicitor of Dana Sargent, complainant as aforesaid, being duly sworn on oath says: That the matters stated in the above and foregoing amendments are true to the best of his knowledge, information, and belief.

GEO. H. PATRICK.

Sworn and subscribed to before me, at Mobile, this 2nd August, 1880.

HENRY S. SKAATS,
Com'r U. S. Circuit Court, S. D. Ala.

Filed August 2nd, 1880.

50 *Setting Down of Demurrer.*

Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JNO. A. HELTON, Sheriff of Escambia County, Alabama; MCDUFF MANN, HENRY MORNINGSTAR, YOUNG M. RABB, JAMES MANN, and RABB and MANN, Defendants.

Complainant sets down the demurrer to the bill of complaint herein to be argued on Wednesday, January 25th, 1882.

At rules, Monday, January 2nd, 1882.

RICHARD L. CAMPBELL,
GEO. H. PATRICK,
Solicitors for Complainant.

Filed January 11th, 1882.

N. W. TRIMBLE, *Clerk.*

51 *Agreement of Counsel.*

In the Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JNO. A. HELTON, Sheriff; JAMES W. MANN, RABB and MANN, HENRY MORNINGSTAR, YOUNG M. RABB, and MCDUFF MANN, Defendants.

Complainant, by leave of court first had and obtained, defendants consenting thereto, amends the bill of complaint herein, as amended, by making Daniel F. Sullivan, a citizen of the State of Florida, assignee of said Dana Sargent, party complainant, and by making James H. Green, sheriff of Escambia county, Alabama, as the successor in office of defendant, Jno. A. Helton, who is a citizen of the State of Alabama, party defendant, and said amendments are written in red ink in their appropriate places in said bill, and said cause is set down for *for* argument upon defendants' demurrer to said bill on Wednesday, February 1st, A. D. 1882.

RICH'D L. CAMPBELL,
GEO. H. PATRICK,
Solicitors for Complainant.

Mobile, January 20th, 1882.

52 Agreed to, with leave to renew, and add new grounds of demurrer.

ANDERSON & BOND,
Solicitors for Defendants.

Filed Jan'y 26th, 1882. N. W. TRIMBLE, *Clerk.*

Order of Court on Agreement, &c.

In the Circuit Court of the United States for the Southern District of Alabama. In Equity.

DANA SARGENT, Complainant,
against
JNO. A. HELTON, Sheriff; JAMES W. MANN, RABB & MANN, HENRY MORNINGSTAR, YOUNG M. RABB, and MCDUFF MANN, Def'ts.

In this cause, upon motion of Richard L. Campbell and George H. Patrick, Esq's, solicitors for Dana Sargent, complainant, and by consent of defendants, by Anderson and Boyd, Esq'r's, their solicitors, which consent is filed, it is ordered that Daniel F. Sullivan, a

citizen of Florida, assignee of said Dana Sargent, complain-
53 ant, be, and he hereby is, admitted as party complainant herein, and that James H. Green, sheriff of Escambia county, Alabama, and a citizen of the State of Alabama, as successor in office of said defendant, John A. Helton, be, and he hereby is, made a party defendant, and that complainant is allowed to amend his said bill of complaint accordingly; and it is further ordered, by consent, that an appearance be entered for said Sullivan by the solicitors of complainant in this cause without prejudice to any legal rights of defendants; and it is further ordered, by consent, as aforesaid, that said cause be set down for argument upon defendants' demurrer to said bill as amended on Wednesday, February 1st, 1882.

Mobile, January 26th, 1882.

JOHN BRUCE,
U. S. District Judge, sitting and presiding as Circuit Judge.

Filed January 26th, A. D. 1882.

N. W. TRIMBLE, *Clerk.*

54 *Demurrer.*

In the U. S. Equity Court, Southern Dist. of Ala.

DANA SARGENT *vs.* JOHN A. HELTON & others.

The defendants demur to the bill as amended by making D. F. Sullivan party complainant.

1st. For a misjoinder of parties and the making a new case.

2nd. Because it is not competent to make Sullivan a sole party comp-ete, and because the interest of said Sullivan was acquired since the bill was filed, and pending this litigation. Defendants also demur to the bill as amended in all other respects, and assign as causes of demurrers the same which were heretofore filed to the bill before the same was amended, and hereby apply on said grounds of demurrer to the whole bill with its amendments.

D. CLOPTON,
ANDERSON & BOND,
For all Defendants except J. A. Helton.

We hereby certify, as counsel for defendants, that the fore-
55 going grounds of demurrer are well founded in law, and are well taken & not made for delay.

D. CLOPTON,
ANDERSON & BOND,
For Defendants.

Personally come Y. M. Rabb, one of said defendants, acting for himself & the other defendants in this cause, & who, being duly sworn, deposes & says: That the foregoing demurrers are not made for delay, but, as he is advised, to meet the substantial merits of the case.

Y. M. RABB.

Subscribed and sworn to before me, this 2nd Feb'y, 1882.

N. W. TRIMBLE, *Clerk.*

Filed Feb. 2nd, 1882.

N. W. TRIMBLE, *Clerk.*

56 *Decree Sustaining Demurrer & Dismissing Bill.*

In the Circuit Court of the United States for the Southern District of Alabama.

DANA SARGENT *et al.*

vs.

JOHN A. HELTON, Y. M. RABB, *et als.*

This cause is submitted on the demurrers of defendants to the bill of complaint; and after argument and upon consideration it is ordered, adjudged, and decreed that the demurrer to the bill of complaint is well taken, and is, in all respects, sustained.

It is further ordered, adjudged, and decreed that the bill of complaint be dismissed out of this court, and that the injunction heretofore granted be and is dissolved.

It is further ordered that complainants pay the costs of this suit, to be taxed by the clerk, for which execution may issue.

February 3, 1882.

JOHN BRUCE, *Judge.*

Filed Febr'y 3rd, 1882.

N. W. TRIMBLE, *Clerk.*

57 *Appeal.*

Supreme Court of the United States. In Equity.

DANA SARGENT and DANIEL F. SULLIVAN, Assignee of said Dana Sargent, Complainants and Appellants,

against

JOHN A. HELTON, Sheriff of Escambia County, Alabama, and JAMES H. GREEN, Sheriff of Escambia County, Alabama, as the successor in office of said John A. Helton; Young M. Rabb, McDuff Mann, and said Young M. Rabb and McDuff Mann, under the style of Rabb and Mann; Henry Morningstar, and James W. Mann, Defendants and Appellees.

The above-named complainants and appellants, conceiving themselves aggrieved by the final decree entered on the 3rd day of February, A. D. 1882, in the circuit court of the United States for the southern district of Alabama, do hereby appeal therefrom, and from each and every part thereof, to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, pleadings, and decrees in the cause, duly authenticated, may be sent to the said Supreme Court.

Dated at Mobile, Alabama, February 7th, A. D. 1882.

58 DANA SARGENT.
DANIEL F. SULLIVAN,
Assignee of said Dana Sargent,
By RICHARD L. CAMPBELL,
GEORGE H. PATRICK,
Solicitors and Counsel for Complainants and Appellants.

Appeal allowed February 15th, 1882.

JOHN BRUCE,
District Judge of the United States for the Districts of Alabama, sitting and presiding as Circuit Judge.

Filed February 15th, 1882.

N. W. TRIMBLE, *Clerk.*

59 *Stipulation and Agreement upon penalty of Supersedeas Bond.*

Supreme Court of the United States. In Equity.

DANA SARGENT and DANIEL F. SULLIVAN, Assignee of said Dana Sargent, Complainants and Appellants,
against
JOHN A. HELTON, Sheriff of Escambia County, Alabama, and JAMES H. GREEN, Sheriff of Escambia County, Alabama, as the successor in office of said John A. Helton; Young M. Rabb, McDuff Mann, and said Young M. Rabb and McDuff Mann under the style of Rabb and Mann; Henry Morningstar, and James W. Mann, Defendants and Appellees.

It is hereby stipulated and agreed that the bond to supersede the final decree entered in said above-entitled cause in the circuit court of the United States for the southern district of Alabama on the 3rd day of February, A. D. 1882, on appeal to the Supreme Court of the United States, shall be in the sum of forty thousand dollars.

Montgomery, Alabama, February 15th, 1882.

D. CLOPTON,
Solicitor for Defendants & Appellees.
RICHARD L. CAMPBELL,
GEORGE H. PATRICK,
Solicitors for Complainants & Appellants.

Filed February 15th, 1882.

60 *Appeal Bond.*

Know all men by these presents that we, Dana Sargent and Daniel F. Sullivan, as principals, and Martin H. Sullivan, George W. Wright, and M. F. Gonzalez, of Pensacola, in the State of Florida, as sureties, are held and firmly bound unto James H. Greene, sheriff of Escambia county, State of Alabama, and his successors in office, Young M. Rabb, McDuff Mann, severally, as well as copartners under the style of Rabb & Mann, Henry Morningstar, and James W. Mann, their executors, administrators, and assigns, in the sum of forty thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Given under our hands and seals, this 14th day of February, A. D. 1882.

Whereas lately, on the 3rd day of February, A. D. 1882, a final decree was rendered against the said Dana Sargent and said Daniel F. Sullivan at a term of the United States circuit court for the fifth

circuit and the southern district of Alabama, in a suit in equity depending in said court, in which said suit the said Dana Sargent and Daniel F. Sullivan were complainants and the above-mentioned James H. Greene, as sheriff of Escambia county, State of Alabama; Young M. Rabb, McDuff Mann, severally, and also as copartners under the style of Rabb and Mann; Henry Morningstar, and James W. Mann were respondents; and whereas the said Dana Sar-
61 gent and Daniel F. Sullivan having applied for and obtained an appeal to the Supreme Court of the United States to reverse the said decree in said suit, and having also obtained a citation directed to said James H. Greene, sheriff of Escambia county, State of Alabama; Young M. Rabb, McDuff Mann, severally and as copartners under the style of Rabb & Mann; Henry Morningstar, and James W. Mann, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, therefore, the condition of this obligation is such, that if the above-named Dana Sargent and Daniel F. Sullivan shall well and truly prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make their said appeal good, then this obligation to be void; else to be and remain in full force and virtue.

DANA SARGENT, [SEAL.]
By E. E. BATES,
Attorney-in-Fact.
D. F. SULLIVAN. [SEAL.]
M. H. SULLIVAN. [SEAL.]
GEO. D. WRIGHT. [SEAL.]
M. F. GONZALEZ. [SEAL.]

Witness:
T. E. JORDAN.

Approved Feb'y 15th, 1882.
JOHN BRUCE, *Judge.*

62 STATE OF FLORIDA, *Escambia County:*

George W. Wright and M. F. Gonzalez, citizens of Pensacola, in said State, and sureties in the above bond, being duly sworn, say: That each of them is worth the sum of twenty thousand dollars over and above all debts, liabilities, exemptions, and homestead rights.

GEO. W. WRIGHT.
M. F. GONZALEZ.

Sworn to and subscribed before me, this 14th day of February, A. D. 1882.

T. E. JORDAN,
Notary Public.

STATE OF FLORIDA, *Escambia County:*

Martin H. Sullivan, citizen of Pensacola, in said State, and surety in the above bond, being duly sworn, says: That he is worth the sum of forty thousand dollars over and above all debts, liabilities, exemption, and homestead rights.

Sworn to and subscribed before me, this 14th day of February, A. D. 1882.

T. E. JORDAN,
Notary Public.

Filed February 15th, 1882. N. W. TRIMBLE, *Clerk.*

63 Circuit Court of the United States for the Southern District of Alabama.

I, N. W. Trimble, clerk of the court aforesaid, hereby certify the foregoing pages, numbered from 1 to 64, to be a true transcript of all the original papers in the case of Dana Sargent *et als.* against John A. Helton *et als.*, as same appears of record on file in my office, and that the citation hereto attached is the original citation in this cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said circuit court, this 5th day of July, A. D. 1882.

[SEAL.] N. W. TRIMBLE, *Clerk.*

64 *Citation.*

The United States of America, by the honorable John Bruce, district judge of the United States for the district of Alabama, sitting and presiding as one of the judges of the circuit court of the United States for the southern district of Alabama, to John A. Helton, sheriff of Escambia county, Alabama; James H. Green, sheriff of Escambia county, Alabama, as the successor in office of the said John A. Helton; Young M. Rabb, McDuff Mann, and said Young M. Rabb and McDuff Mann, under the style of Rabb and Mann; Henry Morningstar and James W. Mann, who are citizens of the State of Alabama, Greeting:

Whereas Dana Sargent, a citizen of the State of New Hampshire, and Daniel F. Sullivan, a citizen of the State of Florida, assignee of the said Dana Sargent, have lately appealed to the Supreme Court of the United States from a decree lately, to wit, on the 3d day of February, A. D. 1882, rendered in the circuit court of the United States for the southern district of Alabama, in the fifth judicial circuit, made in favor of you, the said John A. Helton, sheriff of Escambia county, Alabama; James H. Green, sheriff of Escambia county, Alabama, as the successor in office of said John A. Helton, Young M. Rabb, McDuff Mann, Rabb and Mann, Henry Morningstar, and James W. Mann, citizens of the State of Alabama, and have filed the security and given the bond required by law, you are, therefore, hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the second Monday in October next, to show cause why said decree should not be corrected and speedy justice be done to the parties in that behalf, and to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Montgomery, Alabama, in

the fifth judicial circuit, the fifteenth day of February, in the year of our Lord one thousand eight hundred and eighty-two.

JOHN BRUCE,
Judge of the District Court of the United States for the District of Alabama, sitting and presiding as one of the Judges of the Circuit Court of the United States for the Southern District of Alabama.

SOUTHERN DISTRICT OF ALABAMA, *ss:*

Due and legal service of the appeal and citation in said above cause accepted, this fifteenth day of February, A. D. 1882.

D. CLOPTON,
Solicitor for Defendants and Appellees.
ANDERSON & BOND,
Solicitors for Defendants and Appellees.

65 Supreme Court of the United States. In Equity.

DANA SARGENT and DANIEL F. SULLIVAN, Assignee of said Dana Sargent, Complainants and Appellants,
against
JOHN A. HELTON, Sheriff of Escambia County, Alabama, and James H. Green, Sheriff of Escambia County, Alabama, as the successor in office of the said John A. Helton; Young M. Rabb, McDuff Mann, and said Young M. Rabb and McDuff Mann, under the style of Rabb and Mann; Henry Morningstar and James W. Mann, Defendants and Appellees.

SOUTHERN DISTRICT OF ALABAMA, *ss:*

Romulus W. Ruter, being duly sworn, says: That on the sixteenth day of February, A. D. 1882, he served a copy of the appeal and a copy of the citation filed in this cause with the clerk of the circuit court in and for the southern district of Alabama, on the above-named appellee, James H. Green, sheriff of Escambia county, Alabama, by delivering said copy of the citation to the said appellee personally, and by leaving said copy of the appeal for said appellee in the clerk's office of the circuit court aforesaid.

R. W. RUTER.

Sworn to and subscribed, at Mobile, Alabama, this 20th day of February, A. D. 1862, before me—

HENRY S. SKAATS,
Circuit Court Commissioner of the Circuit Court of the United States for the Southern District of Alabama, Fifth Circuit.

(Endorsed:) Supreme Court United States. In equity. Dana Sargent, and Daniel F. Sullivan, assignee of Dana Sargent, complainants and appellants, against John A. Helton, sheriff of Escambia county, Alabama, and James H. Green, sheriff of Escambia county, Alabama, as the successor in office of John A. Helton; Young M. Rabb, McDuff Mann, Rabb and Mann, Henry Morningstar, and James W. Mann,

defendants and appellees. Citation. Filed February 15th, A. D. 1882. N. W. Trimble, clerk. Richard L. Campbell and George H. Patrick, solicitors for complainants and appellants.

Endorsed on cover: S. Alabama C. C. U. S. No. 285. Dana Sargent, and Daniel F. Sullivan, assignee of Dana Sargent, appellants, *vs.* John A. Helton, sheriff of Escambia county, Alabama, and James H. Green, sheriff of Escambia county, successor in office of said John A. Helton; Young M. Rabb, & McDuff Mann, & Young M. Rabb & McDuff Mann, under the style of Rabb & Mann; Henry Morningstar, and James W. Mann. Filed 29th September, 1882.

In the Supreme Court of the United States.

DANA SARGENT, AND MARTIN H. SULLIVAN AND EMILY S. SULLIVAN, AS EXECUTOR AND EXECUTRIX OF DANIEL F. SULLIVAN AS ASSIGNEE OF SAID DANA SARGENT,

vs.

JOHN A. HELTON, SHERIFF OF ESCAMBIA COUNTY, ALABAMA, JAMES H. GREEN, SHERIFF OF ESCAMBIA COUNTY, ALABAMA, SUCCESSOR IN OFFICE OF SAID JOHN A. HELTON, YOUNG M. RABB AND McDUFF MANN, AND YOUNG M. RABB AND McDUFF MANN, UNDER THE STYLE OF RABB & MANN, HENRY MORNINGSTAR, AND JAMES W. MANN.

Appeal from the Circuit Court of the United States for the Southern District of Alabama.

STATEMENT OF THE CASE.

The bill, which was filed on 10th July, 1879, alleges that the Pensacola Lumber Company, a New York corporation, was, on 27th February, 1875, adjudicated a bankrupt by the District Court for the Southern District of New York, sitting in bankruptcy; that C. Edgar Smith, having been duly elected and qualified as assignee of said bankrupt, a deed of assignment of the estate of the said bankrupt was, on 18th May, 1875, executed to him according to section 5044 of the Revised Statutes of the United

States; that the bankrupt owned an undivided half of a number of tracts of land, and the whole of many other tracts, consisting of ninety sections and parts of sections, lying in seven townships in Escambia County, State of Alabama, and which are particularly described in the bill; that under a decree of this court in bankruptcy, rendered on 22d December, 1875, the lands were sold at public sale on 5th January, 1876, in the city of New York, and bought by said Sargent; that on 18th January, 1876, the sale was confirmed by the court, and Sargent, having complied with the terms of sale, on the 25th of the same January a deed conveying the lands to him was executed by the assignee, and that on 7th February thereafter this deed was recorded in the Probate Office of said County of Escambia; and thereupon Sargent entered into possession of said lands.

The bill further alleges that the respondents, respectively, instituted actions by attachment against the bankrupt on the 18th, 19th, and 22d February, 1875, in the Circuit Court of Escambia County, Alabama, and that the writs of attachment were on those days levied upon the said lands and some personal property of the bankrupt found in this county; that the estate of the bankrupt being then in the hands of said Smith, as receiver, he obtained from the District Court of the United States for the Southern District of Alabama an order enjoining the sheriff of Escambia County and the other respondents from interfering with the property of the bankrupt until the further order of the last-mentioned District Court; and thereupon the sheriff surrendered said personal property to the receiver, who disposed of it as a part of the bankrupt's estate.

The bill further alleges that the assignee, Smith, having ascertained in 1878 that the respondents intended to prosecute their attachment suits to final judgments, and to satisfy the judgments by a sale of the lands, in order to prevent a cloud from being thrown upon Sargent's title by

such proceedings, at the fall term, A. D. 1878, of said Circuit Court of Escambia County, by attorney, moved to be made a party to the attachment suits, with the view of causing the attachments to be formally dismissed, basing his motion upon a certified copy of the deed of assignment executed to him under section 5044 of the Revised Statutes of the United States; but the court refused to grant the motion, assigning as a reason for its refusal that the motion had not been made within two years from the date of the appointment of the assignee, as required by section 5057 of the Revised Statutes of the United States.

The bill further alleges that at the above-mentioned term of said Circuit Court of Escambia County petitions, as required by the act of Congress of 3d March, 1875, for the removal of the attachment suits from the Circuit Court of Escambia County to the Circuit Court of the United States for the Southern District of Alabama, were presented to the said State court by the defendant in said suits, which was a corporation created and existing under the laws of the State of New York, as above stated, whilst the plaintiffs in said several attachment suits were, at the time the same were instituted and the petitions for removal filed, citizens of the State of Alabama; that said petitions, accompanied by good and sufficient bonds, as required by the act of Congress of 3d of March, 1875, were refused, although presented to the court, not only before the trial of any of the suits, but before any plea had been filed or judgment by *nil dicit* had been rendered in any of them by the State Circuit Court; and afterwards, during the same term of the State Circuit Court, judgments by *nil dicit* were rendered in all of the attachment suits, writs of inquiry executed, and final judgments rendered in each of said cases for more than five hundred dollars, besides costs of suits; that by said judgments the lands attached were condemned to be sold to satisfy the same, according to the practice obtaining in cases where the attachment lien is

continued in full force from the levy of the attachment up to final judgment and sale, and in total disregard of the fact that the attachment lien in each of said cases had been discharged by the dissolution of the attachment by the operation of section 5044 of the Revised Statutes of the United States; and that on the 24th of June, A. D. 1879, the clerk of the Circuit Court of Escambia County issued to the sheriff thereof, not writs of *fieri facias* founded on judgments, but an order to advertise and sell the lands, in obedience to the judgments condemning the lands to be sold on the first Monday of August thereafter, and that the sheriff was proceeding to execute the order.

The bill further alleges that a sale of the lands under said order will lead to the destruction of the timber thereon by irresponsible trespassers, hitherto restrained with difficulty and great expense, but who will then be encouraged by the fancied immunity afforded them by the pretended titles to be acquired under the contemplated sale; that the lands were held and owned in connection with a saw-mill, of which they are a necessary adjunct; that the order of sale has already thrown a cloud on the title to the lands, and greatly impaired the value of the property; that the execution of the order of sale would deepen that cloud, increase that depreciation, and impair complainant's business and credit, and inflict an injury for which he could obtain no satisfaction, owing to the insolvency of the respondents and the insufficiency of the sheriff's bond and estate; and that the lands, consisting of ninety odd sections and parts of sections, would probably, if sold, be bought by many persons, and thus complainant would be involved in a multiplicity of suits to vindicate his title.

The bill further alleges that the respondents, other than the sheriff, are general creditors of the bankrupt and parties to the bankrupt proceedings under which the lands were sold and bought by complainant.

The prayer of the bill is, that the sheriff may be en-

joined from selling the lands, or any part of them, and for other and further relief.

On 15th July, 1879, a temporary injunction was granted, after notice and argument of counsel for complainant and respondents, and upon complainant's giving bond with security. (Pp. 6–10.)

On 2d August, 1879, the respondents demurred to the bill. (P. 16.)

On 1st February, 1882, by leave of court, and with the consent of respondents, Daniel F. Sullivan, a citizen of the State of Florida, and assignee of said Sargent, was made a party complainant to the bill, and James H. Green, sheriff of said County of Escambia, as successor of said Helton, was made a party respondent thereto. (R., pages 22, 23.)

On 2d February, 1882, the respondents demurred to the bill as amended. (R., p. 23.)

On 3d February, 1882, a decree was rendered by the court sustaining the demurrer, dismissing the bill, and dissolving the injunction. (R., p. 24.)

Assignment of Errors.

The appellants assign the following errors in the decree of the Circuit Court:

1. It erred in sustaining the demurrer to the bill.

2. It erred in dissolving the injunction.

3. It erred in dismissing the bill.

4. It erred in not decreeing a perpetual injunction.

ARGUMENT.

Sargent, one of the appellants, was in possession of the land, to which he had acquired title, on 19th January, 1876, by purchase under a decree of the District Court of the United States for the Southern District of New York, sitting in bankruptcy, in the case of the Pensacola Lumber Company, a New York corporation, and owner of the land before the purchase of Sargent. (Pp. 1, 2.)

The attachments, under which the respondents claim liens upon the land, having been levied within four months (p. 3) preceding the adjudication in bankruptcy, which occurred on 27th February, 1875, (p. 1,) were, *ipso facto*, dissolved under section 5044 of the Revised Statutes of the United States, upon the execution of the deed of assignment, on 18th May, 1875 (p. 1). (Doe *v.* Childress, 21 Wall., 642; Connor *v.* Long, 104 U. S., 228.)

The injunction issued by the District Court for the Southern District of Alabama, (p. 3,) before the appointment of the assignee, suspended the attachments until they were dissolved by the execution of the deed of assignment.

The motion of the assignee, made at the fall term, 1879, of the State court, to procure a formal dismissal of the attachments, was designed to prevent the making of the orders of sale, and thus to obviate the threatened injury to Sargent, which the bill in this case was filed to prevent. (Pp. 3, 4.)

Such a motion cannot be held to be "a suit either at law or in equity" under section 5057 of the Revised Statutes of the United States, as declared by the State court. (R., p. 4.)

The special grounds for relief by injunction presented by the bill are threefold:

1. To prevent a multiplicity of suits, which would be

the natural consequence of the sales ordered by the State court. (Crews *v.* Burcban, 1 Black, 352.)

In that case there were a number of lots and claimants. The lands in this case consist of over ninety alternate sections, or parts of sections, lying in seven townships. (Pp. 1, 2, 5.) The adverse claimants are now five, and a sale under the orders of the State court would create many more.

2. Irreparable injury to appellant's business, waste, and inability of respondents to respond to the damage which the execution of the orders of sale would inflict. (P. 5.)

3. Such sale would throw a cloud upon appellant's title. (Davis *v.* Gray, 16 Wall., 203; p. 232.)

II.

Section 720 of the Revised Statutes presents no obstacle to the relief for which complainant prays.

FIRST. His case is one arising under the bankrupt law. (Dial *v.* Reynolds, 6 Otto, 340.)

The mental inability to conceive of it, aside from that law, in respect to the rights of complainant, and the obligations of respondents as well, is a conclusive test that it had its origin in and rests upon that law.

Complainant's rights have their origin in the fourth clause, section 8, article 1, of the Constitution of the United States, which conferred upon Congress the power to establish a uniform system of bankruptcy, and their consummation under section 5062 of the Revised Statutes, by virtue of which the District Court of New York made its decree and complainant his purchase.

That sale and purchase were the appointed means for effecting the primary object of the bankrupt system—the conversion of the bankrupt's estate into money for distribution amongst the general creditors.

As respects the obligations of respondents, other than the sheriff, they being general creditors, (p. 5,) were parties to the bankrupt proceedings, which in all their parts constituted but one suit, from the adjudication to the sale under the decree of the District Court. (Phelps *v.* Sellich, 8 B. R., 390; Watson *v.* Citizens' Savings Bank, 11 B. R., 161.)

Again, the bankrupt proceeding in its entirety was a suit in *rem.;* (New Lamp Chimney Co. *v.* Ansonia, &c., Co., 1 Otto, 656;) and in that suit the legal status of the *res* in this case was fixed, both as respects Sargent and respondents, the *res* inuring to him as a purchaser, and respondents' share of the purchase-money paid by him accruing to them as a substitute for whatever interest they might have had in the estate.

One of the incidents of that suit in *rem.* was the dissolution of respondents' attachments by section 5044 of the Revised Statutes, and *that* dissolution enabled the District Court to find a purchaser in complainant.

To prevent some of the parties to that suit from nullifying the decree of sale of the bankrupt court by proceedings in a State court is the object of this case.

It involves two fundamental provisions of the bankrupt act:

1. The appropriation of the bankrupt's estate for the benefit of all the general creditors, respondents among the rest.

2. The conversion of the estate into money by a sale, in order to effect that object, as provided by section 5062 of the Revised Statutes.

In the authority of the assignee under that section to sell is involved the right of plaintiff to buy, and an implied equity that he should be protected in his purchase against

all parties to the bankrupt suit not claiming by a paramount title.

It is a familiar rule of equity that all parties to a suit will be enjoined from disturbing a purchaser under the decree where they do not claim by a paramount title. (2 Daniel's Ch. Pr. (4th Am. Ed.), 1061.)

The implication, therefore, that complainant is entitled to protection by injunction is inevitable.

What is implied in a statute is as much a part of the enactment as what is expressed. (United States *v.* Hodson, 10 Wall., 395.)

And therefore the injunction which the plaintiff's case requires is in every legal sense "authorized" by the bankrupt law. Haines *v.* Carpenter, 1 Otto, 254, and Dial *v.* Reynolds, 6 Otto, 340, are consistent with this argument.

In Haines *v.* Carpenter the excepted cases are said to be those "provided for by the bankrupt law."

Cases embraced by implication like this, as above shown, are amongst those "provided for."

In Dial *v.* Reynolds the excepted cases are stated to be those "arising under the bankrupt act."

The cases are numerous where the bankrupt courts, since the adoption of section 720 of the Revised Statutes, have stayed proceedings in the State courts, when such course was deemed necessary to the due administration of the bankrupt law, though power to stay was not expressly given by the bankrupt act, viz., by sections 5024 and 5106 of the Revised Statutes. (Hodson, Assignee, *v.* Schwab *et al.*, Nat. Bankrupt Register, v. 18, p. 480, and cases cited and reviewed.)

SECOND. The object of the bill is to prevent an attempt, by proceedings in a State court, to nullify an act of Congress, by depriving a party of rights derived under the decree of a Federal court founded thereon.

The act of Congress of 3d March, 1875, section 1, gives

the Circuit Courts original cognizance of all questions arising under the Constitution and laws of the United States, without regard to citizenship, patent rights, bankruptcy, or any other special ground. (Whitsett *v.* Railroad Company, 13 Otto, 770.)

The bill in this case not only presents a right resting upon a Federal statute, but a right adjudged and vested by the decree of a Federal court.

If the Circuit Court, as a matter of original jurisdiction, can interfere to enforce an unadjudged right, founded on such law, its power must be equal to enforcing obedience to a decree founded on that law.

When, therefore, complainant invokes this court to give effect to a decree founded on an act of Congress, which the Federal court that rendered it cannot do, because the parties and subject-matter are extra its territorial jurisdiction, he is in effect asking for the enforcement of a right under such act.

The decree in such a case is but a step towards the fruition of such right; and the law remains unexecuted until he to whom the right is adjudged is in the full enjoyment thereof.

Dietzsch *v.* Huidekoper, 13 Otto, 494, declares that where parties to a judgment rendered in a United States court, under the authority of a Federal law, undertake by proceedings in a State court to interfere with rights acquired under such judgment, they will be enjoined, notwithstanding section 720 of the Revised Statutes.

The pith and marrow of that case was the attempt, by proceedings in a State court, to nullify the provisions of the removal law of 1875.

The gist of this case is an attempt, by proceedings in a a State court, to nullify sections 5044 and 5062—the one dissolving the attachments and the other authorizing the District Court of New York to decree a sale of the property of a bankrupt.

The postulate on which the injunction in Dietzsch *v.* Huidekoper rests is, that the State court had no jurisdiction to maintain a suit on the replevin bond, because it had been deprived of all authority over the subject-matter by the removal proceedings under section 2 of the act of March 3d, 1875.

The injunction in *this* case rests upon the postulate—that the State court had no jurisdiction to order a sale of the lands, because it was deprived of all authority over them by the dissolution of the attachments by section 5044 of the Revised Statutes.

The jurisdiction of the State court of Illinois over the subject-matter existed until the removal, when it ceased, and its action thereafter was usurpation and a violation of Federal law.

In like manner the jurisdiction of the State court of Alabama to hold the lands by attachment was rightful until the execution of the deed of assignment, when it ceased, and its orders of sale, subsequently made, were usurpation and invasion of Federal authority.

If invasion of Federal jurisdiction in Illinois was not shielded by section 720, why should it shield a like invasion in Alabama?

By his petition to be made a party to the suits in the State court, based on the assignment to him of the estate of the bankrupt, the assignee fully advised the court of the facts which deprived it of jurisdiction, viz., that the attachments had been made within four months of the time when the proceedings in bankruptcy were commenced, that the defendant had been adjudicated a bankrupt, and that the title to the bankrupt's estate had been vested in the assignee.

By section 5049 of the Revised Statutes the copy of the assignment, certified by the clerk of the court, is made conclusive evidence of title in the assignee; and the assignment stated on its face the date from which the title

vested, this being the date when the bankrupt proceedings were commenced.

See No. 18 of the Forms in Bankruptcy prescribed by this court.

THIRD. The steps taken by the Pensacola Lumber Company for the removal of the attachment suits from the State Court to the Circuit Court of the United States, under the act of Congress of 3d March, 1875, deprived the former of all jurisdiction over them, and vested it exclusively in the latter.

The petitions and bonds were presented and filed before the Pensacola Lumber Company had even pleaded. (Babbit *v.* Clark, 103 U. S., 606; Errington *v.* Jefferson, 111 U. S., 770.)

The cases not being in the State court when the orders of sale were made, the attempt of the sheriff to execute them brings them within the ruling in Dietzsch *v.* Huidekoper, *supra;* Gordon *v.* Longest, 16 Peters, 97; Insurance Co. *v.* Dunn, 19 Wall., 214.

III.

Making Sullivan, as assignee of Sargent, a party complainant, neither rendered the bill multifarious nor made a new case. That could have been done by a supplemental bill. (Story's Eq. Pl., secs. 349, 885*a*.)

The consent of respondents, that it should be done by amendment, obviated the necessity for such bill. (Record, p. 22.)

RICHARD L. CAMPBELL,
LEWIS ABRAHAM,
CHARLES E. MAYER,
Counsel for Appellant.